

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 408/2011**

BHARAT LAL

..... Petitioner

Through: Mr. Sanjay Bansal, Advocate.

versus

THE GENERAL MANAGER, NORTHERN
RAILWAY & OTHERS

..... Respondents

Through: Mr. Jagjit Singh, Advocate.

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Date of Decision : November 09, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 filed by the petitioner seeking appointment of an arbitrator in terms of Clause 64 of the Agreement entered into between the parties.

2. The facts relevant for the decision of the present petition are as follows. The work for construction of Staff Quarters 20 Units Type-III (G+3), 6 Units Type-IV (G+1), 4 Units Type-IV Special (G+1), 1 Unit Type-V, Duplex and other allied works for RPSF at Daya Basti, Delhi was awarded to the petitioner vide letter No.74-W/13/66/PTNR/WA/TCR dated 30.01.2004. An Agreement was entered into between the parties bearing Agreement No.190-W/PTNR

dated 04.06.2004. The entire work was required to be completed within 18 months from the date of issue of the acceptance letter dated 30.01.2004. After the completion of the work the petitioner vide letter dated 22.02.2010 addressed to the Chief Administrative Officer, Northern Railway, Kashmere Gate, Delhi submitted 12 claims and requested for appointment of an arbitrator for adjudication of the said claims. The Chief Administrative Officer/Construction, Northern Railway vide letter No.74-W/1/13/95/WA/SSB/Arb. dated 16.07.2010 advised the petitioner that his demand for arbitration was not tenable as he had already signed a Supplementary Agreement. Aggrieved therefrom, the petitioner filed the present petition for appointment of an arbitrator, preferably a Retired Engineer of CPWD to adjudicate and decide the disputes expeditiously in terms of Clause 64 of the Arbitration Agreement.

3. The petitioner claims that he had completed the entire work to the satisfaction of the respondents and the same was accepted by the respondents. Even the bills were duly prepared for the entire work. But the respondents had forcibly and under undue influence obtained the signatures of the petitioner on the Supplementary Agreement vide their letter dated 27.10.2009 under the garb of release of security deposit of the petitioner. The petitioner had signed the Supplementary Agreement on 03.11.2009, so as to get the security deposit released in order to clear his debts towards the Bank.

4. The petitioner alleges that on 1.10.2009 he had written to the Deputy Chief Engineer/Construction, Northern Railway, that the last payment received by him was much less than the value of the work

executed by him and that his acceptance of the last bill paid to him be treated as received *“under protest and not as full and final”*. He further states that his acceptance on the bill body was *“coercive, under pressure and undue influence and had not been given freely with free will”* and *“the same be treated as null and void”*. The petitioner further claims that on 12.10.2009 he again wrote to the Deputy Chief Engineer/Construction, Northern Railway for the release of his security deposit stating therein that despite completion of work and release of last bill the department had failed to release the security deposit as the department was bent upon the petitioner signing the Supplementary Agreement before passing the release order. The respondents responded vide letter dated 27.10.2009 requesting the petitioner to sign the Supplementary Agreement in terms of Clause 9.8 of the tender conditions to enable them to release the security given by the petitioner.

5. It is not in dispute that the Supplementary Agreement was signed by the petitioner on 3.11.2009, but on 9.12.2009 the petitioner again wrote to the respondents that the said Supplementary Agreement had been signed by him under coercion, pressure and undue influence and the same be treated as null and void. By his subsequent letter dated 22.2.2010, the petitioner requested the Railways for the appointment of an arbitrator in terms of Clause 63 and 64, setting out all the particulars of his claims thereunder. The respondents through their reply dated 16.07.2010 intimated that the petitioner had signed the final bill with the remarks: **“Measurements accepted full and final and no claim against Railway”** and had also signed the

Supplementary Agreement without any protest. The respondent took the stand that after signing of the Supplementary Agreement, the Principal Agreement stood discharged for all purpose including the Arbitration clause.

6. By letters dated 10.10.2010 and 8.11.2010, the petitioner again requested the Deputy Chief Engineer, Northern Railways to appoint an arbitrator within a period of 30 days from the date of receipt of the said letters to adjudicate the disputes between the parties in terms of Clause 64 of the Arbitration Agreement. Eventually the present petition was filed on December 17, 2011.

7. The short question which arises for consideration is whether with the execution of the Supplementary Agreement, the Principal Agreement stood finally discharged and the Arbitration Clause contained in the said Principal Agreement ceased to have any effect.

8. Arguments were addressed by Mr. Sanjay Bansal, Advocate on behalf of the petitioner and Mr. Jagjit Singh, Advocate on behalf of the respondents.

9. In the course of hearing, learned counsel for the petitioner placed reliance on a judgment of the Supreme Court in ***Ambica Construction v. Union of India, (2006) 13 SCC 475***, to contend that the signing of the Supplementary Agreement under coercion and duress by the petitioner cannot be interpreted to mean that the respondents stood discharged from the Principal Agreement including the Arbitration Clause contained therein. He submitted that the petitioner had challenged the authenticity of the Supplementary Agreement, which was signed by the petitioner only on account of the

fact that the department was not otherwise releasing the security deposit of the petitioner. He further submitted that both the Supplementary Agreement and the alleged final bill were in the circumstances got forcibly signed from the petitioner, and the petitioner who was heavily debited to his bankers, suppliers, labour, etc. had signed the Supplementary Agreement as he had no other choice.

10. Learned counsel for the respondents on the other hand contended that the petitioner had signed the final bill on 09.09.2009 and had received the balance payment of Rs.4,50,861/- in full and final settlement of all his claims. The petitioner had also signed Supplementary Agreement on 3.11.2009, whereby he had categorically stated as under:-

“Now it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the part hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid Principal Agreement excluding the security deposit, the party hereto of the second part have no further due or claims against the party hereto the firms part under the said principal agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal

Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clause.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes.

*Sd/-
Signature of Contractor/s
Ms/. Bharat Lal
B-2/257, Paschim Vihar,
New Delhi-110 063.”*

*Sd/-
For and on behalf of
President of India*

11. It is submitted on behalf of the respondents that where the parties to a contract confirm in writing that the contract has been fully and finally discharged by the parties and there is no outstanding claim or dispute, the matter cannot be referred to arbitration, as the right of the petitioner stands extinguished after the execution of the aforesaid document. Learned counsel for the respondents in this context heavily relied upon the judgment of the Supreme Court in ***Union of India and Ors. v. Hari Singh***, Civil Appeal No.7970/2010 (Arising out of SLP (C) No.8306/2008) decided on 22.9.2010, to urge that the petitioner after having executed the Supplementary Agreement was not justified in invoking arbitration as there was no arbitrable dispute left for reference to arbitration. The relevant part of the said judgment is reproduced hereunder and reads as follows:

“8. Learned Additional Solicitor General appearing on behalf of the Union of India has strenuously submitted

that the matter is no longer res integra and is covered by a series of judgments for almost a century. He referred to the judgment of Privy Council in Payana Reena Saminathan v. Pana Lana Palaniappa 14 (1913-14) 41 IA 142 (reiterated in Union of India v. Kishorilal Gupta & Bros. AIR 1959 SC 1362) which reads as under:-

“.....The ‘receipt’ given by the appellants and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the ‘receipt’. It is a clear example of what used to be well known as common law pleading as ‘accord and satisfaction by a substituted agreement’. No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it.”

9. He submitted that this judgment has been approved and followed by this court even in the year 2009.

10. Learned Additional Solicitor General also placed on record the judgment of this court in State of Maharashtra v. Nav Bharat Builders 1994 Supp (3) SCC 83. In this case the court observed that the dispute between the parties were exclusive and the respondent fully and finally accepted the claim and thereafter received the amount. Thus, there was accord and satisfaction of the claim relating to labour escalation charges and thereafter the matter could not have been referred to the arbitrator.

11. *Learned Additional Solicitor General also relied on another judgment of this court in M/s P.K. Ramaiah and Company v. Chairman & Managing Director, National Thermal Power Corpn. 1994 Supp (3) SCC 126. In this case also the respondent received the amount in full and final settlement of his claim. Consequently, there was on accord and satisfaction and thereafter no arbitrable dispute remained for reference to the arbitration.*

12. *This court in Nathani Steels Ltd. v. Associated Constructions 1995 Supp (3) SCC 324 also had an occasion to examine the similar case. The court observed that after settling the entire matter and receiving the payment, it was not open to the respondent to treat the settlement as non est and proceed to invoke the Arbitration clause.*

13. *This court in a relatively recent case has examined the legal position once again in the case of National Insurance Company Limited v. Boghara Polyfab Private Limited (2009) 1 SCC 267. In para 25 of the said judgment, the court observed as under:-*

“25.....where both parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no due certificate as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim. Nor can he seek reference to arbitration in respect of any claim.”

14. The court further observed in para 29 as under:-

“29.....It is thus clear that the arbitration agreement contained in a contract cannot be invoked to seek reference of any dispute to arbitration, in the following circumstances, when the contract is discharged on account of performance, or accord and satisfaction, or mutual agreement, and the same is reduced to writing (and signed by both parties or by the party seeking arbitration).

(a) Where the obligations under a contract are fully performed and discharge of the contract by performance is acknowledged by a full and final discharge voucher/receipt. Nothing survives in regard to such discharged contract.

(b) Where the parties to the contract, by mutual agreement, accept performance of altered, modified and substituted obligations and confirm in writing the discharge of contract by performance of the altered, modified or substituted obligations.

(c) Where the parties to a contract, by mutual agreement, absolve each other from performance of their respective obligations (either on account of frustration or otherwise) and consequently cancel the agreement and confirm that there is no outstanding claims or disputes.”

15. In this case the court relied on earlier judgments of this court and reiterated the legal position which has been crystallized by a series of judgments where both the parties to a contract confirmed in writing that the contract has been fully and finally discharged by the

parties and there was no outstanding claim or dispute and thereafter the matter could not have been referred to the arbitration.

16. In a celebrated book, Russell on Arbitration, 19th Edn., p. 396, it is stated that “an accord and satisfaction may be pleaded in an action on award and will constitute a good defence.”

17. In our considered view, on the basis of the above settled legal position that when the parties by a supplementary agreement obtained a full and final discharge after paying the entire amount, which was due and payable to the contractor, thereafter the contractor would not be justified in invoking arbitration because there was no arbitral dispute for reference to the arbitration.”

12. Having carefully considered the rival contentions of the parties, I am of the view that the contention of the petitioner that it is open to him to invoke the arbitration Clause is wholly untenable. Admittedly the petitioner signed the Final Bill on 9.9.2009. As is apparent from the record, the said Bill bears the following endorsement written in hand and signed by the petitioner:-

“Measurement accepted full and final and no claim against Railway.”

13. The petitioner on 3.11.2009 also entered into a Supplementary Agreement with the respondents affirming that he had no further dues against the respondents under the Principal Agreement and had accepted the last payment in full and final satisfaction of all his dues and claims thereunder. It was further affirmed by the petitioner in the said Supplementary Agreement that all the terms and conditions of the Principal Agreement stood finally discharged and rescinded, including

the Arbitration Clause. Thereafter he sent a legal notice to the respondents and did not even mention the fact of entering into the Supplementary Agreement in the said legal notice. In such circumstances, for the petitioner to turn around at this juncture to state that there was no accord and satisfaction and that all the aforesaid acts were done by him under pressure and coercion would be wholly unjustified.

14. Reliance placed by the petitioner on the judgment of the Hon'ble Supreme Court in the case of *Ambica Construction* (supra) is also misplaced as the facts of the said case are clearly distinguishable. In the said case under Clause 43(2) of the General Conditions of Contract entered into between the parties, the "No Claim" certificate was to be issued by the contractor **after the works were finally measured up**. However, while the work was yet to be completed and there was nothing to indicate that the works as undertaken by the contractor had been finally measured, the contractor was required to submit a "No Claim" certificate. The Hon'ble Supreme Court in the circumstances of the case held that the issuance of the "No Claim" certificate by the contractor while the work was still pending was indicative of coercion and duress, and as such the contractor was entitled to claim arbitration under the contract. In the instant case, it is not in dispute that the work was fully completed and measurements had been taken and accepted by the petitioner, and it was only thereafter that the petitioner signed the final bill and also the Supplementary Agreement, which was signed on 3.11.2009, nearly three months after the signing of the final bill. There is nothing on

record suggestive of the fact that the petitioner was compelled to sign the Supplementary Agreement under duress and coercion as is now sought to be made out. As such, in my opinion, the case is squarely covered by the judgment of the Supreme Court rendered in *Union of India v. Hari Singh (supra)*.

15. On the basis of the aforesaid factual and legal position, I have no hesitation in holding that when the parties entered into the Supplementary Agreement after obtaining a full and final discharge of the Principal Agreement and the amount payable thereunder, the petitioner would not be justified in invoking Clause 64 of the Principal Agreement which stood discharged by the Supplementary Agreement. I accordingly hold that there exists no arbitrable dispute for reference to arbitration.

The petition is accordingly dismissed.

**REVA KHETRAPAL
JUDGE**

November 09, 2012
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